seems to be divided. 20 *Cyc.* 198, notes 1 and 2. For the effect of allowing the enforcement of such contracts, see (1919) 28 YALE LAW JOURNAL, 418.

CORPORATIONS — MUNICIPAL CORPORATIONS — "DEBT" WITHIN THE CONSTITUTIONAL POWER TO CONTRACT.—The defendant city entered into a contract with the plaintiff for the construction of a light and water plant, providing for payment in installments through a series of years after the contract was completed. *Held,* that the effect of such contract is to create a present "debt," within the meaning of the constitutional limitation to contract debts. *McRary Co. v. City of Glennville* (1919, Ga.) 100 S. E. 362.

This result was reached under the binding authority of former Georgia decisions to the same effect. The weight of authority and reason, however, seems in favor of a more liberal rule. 1 Dillon, *Municipal Corporations* (5th ed., 1911) sec. 196; *Toomey v. Bridgeport* (1906) 79 Conn. 229, 64 Atl. 215.

EVIDENCE—MALICIOUS PROSECUTION—PROBABLE CAUSE—PREVIOUS CONVICTION REVERSED.—The defendant initiated the prosecution of the plaintiff for the offense of willfully and knowingly having intoxicating liquor in his possession. The plaintiff was convicted in the city court but, on appeal to the district court, the case was dismissed on motion of the district attorney. The plaintiff then sued for malicious prosecution, setting out *inter alia* his conviction in the city court. The defendant demurred, claiming that the declaration failed to allege that the conviction was obtained by fraud, perjury, or other unfair or undue means. *Held,* that the demurrer should be sustained. *Kennedy v. Burbridge* (1919, Utah) 183 Pac. 325.

See COMMENTS, *supra,* p. 325.

EVIDENCE—PRESUMPTIONS—STATUTE OF SISTER STATES.—The plaintiff brought an action to enjoin the foreclosure of a chattel mortgage given by him as security for two promissory notes. According to the statutes of Wyoming, the notes would draw 8 *per cent.* after maturity, but the notes were made payable in Colorado. *Held,* as a *dictum,* that the statutes of Colorado should be presumed to be the same as those of Wyoming. *Wright & Co. v. Douglas* (1919, Wyo.) 183 Pac. 786.

The same rule holds in Kansas. *Shattuck v. Chandler* (1889) 40 Kan. 516, 20 Pac. 225. For a brief discussion of the point, see (1919) 28 YALE LAW JOURNAL, 694.

EXECUTORS AND ADMINISTRATORS—CLAIMS AGAINST ESTATE—THIRD PARTY BENEFICIARIES.—In consideration of a loan from her mother, the appellant's testatrix promised that at the death of the latter the loan would be paid to her brothers and sisters, the respondents. Upon the death of the testatrix, the respondents presented their claim, but the appellant executor refused to allow it. *Held,* that the claim should be allowed. *Hayford v. Dougherty* (1919, Minn.) 174 N. W. 442.

In the above case the court found it unnecessary to decide whether or not the respondents could sue on the contract as third party beneficiaries, because the facts presented a claim within the meaning of the probate statutes. The beneficiaries could not have recovered against the testatrix nor her executor on the agreement. *Jefferson v. Asch* (1893) 53 Minn. 446, 55 N. W. 604. But the court held that claims under the probate statutes were not limited to those enforcible against the obligor during life. This construction of the statute gives a just result. See also, Corbin, *Contracts for the Benefit of Third Per-*

sons (1918) 27 YALE LAW JOURNAL, 1008; Anson, *Contracts* (3d Am. ed. by Corbin, 1919) ch. ix.

INSURANCE—CONSTRUCTION OF POLICY—"ACCIDENTAL MEANS."—The plaintiff was the beneficiary of an insurance policy issued by the defendant, which insured the deceased against death "effected solely by external, violent, and accidental means." The insured had pricked a pimple on his lip with a scarf pin and infection set in, and resulted in his death. *Held,* that the defendant was liable. *Business Men's Accident Ass'n v. Lewis* (1919, C. C. A. 8th) 257 Fed. 241.

The decision agrees with that rendered in a previous case where the facts were almost identical. *Lewis's Executrix v. Ocean Accident & Guaranty Corp'n Lim.* (1918) 224 N. Y. 18, 120 N. E. 818. In both cases the courts deliberately refused to analyse the language of the contract from a scientific viewpoint, or to make distinctions of a philosophic nature, but adopted the interpretation of the "average" man. It seems, however, that where the benefit of such interpretation would be in favor of the insurer, the courts have been more apt to be technical. See (1918) 28 YALE LAW JOURNAL, 193. The decision is in accord with the general policy of interpreting doubts arising in the construction of insurance contracts in favor of the insured. *Cf.* (1918) 27 *ibid.,* 852.

MANDAMUS—JUDGES—CERTIFICATE OF DISQUALIFICATION.—A trial resulted in a verdict for the defendant, which was set aside upon motion for a new trial. The respondent, then a practicing lawyer, issued a signed statement criticizing the finding made by the court. The respondent later was appointed judge, before whom the case came for the new trial. The relator, the plaintiff in the above case, requested the respondent to certify his disqualification to sit in the trial, upon the ground that he was prejudiced. Upon refusal, the relator made an application for a writ of *mandamus. Held,* that it should be issued in order to insure a fair and impartial trial. *State v. Fullerton* (1919, Okla.) 183 Pac. 979.

Though a novel use of the writ of *mandamus,* in the absence of a statute, yet the court rightly allowed it in order to enforce a plain duty existing in the respondent. For a further application of *mandamus,* see (1919) 28 YALE LAW JOURNAL, 405, 838; *supra,* RECENT CASE NOTES *sub. tit.,* MANDAMUS.

MARRIAGE AND DIVORCE—FRAUD—ANNULMENT BECAUSE OF UNCHASTITY.—The petitioner married the respondent after being assured by her that she was chaste and virtuous. After the consummation of the marriage, the respondent disclosed the fact that the prior representations as to her chastity were not true. The petitioner abandoned her immediately and petitioned for an annulment. *Held,* that his petition should be granted. *Gatto v. Gatto* (1919, N. H.) 106 Atl. 493.

The opinion of the court includes a thorough and extended review of the cases bearing on the questions of law and policy raised in the principal case. Many of these cases have been discussed in (1915) 24 YALE LAW JOURNAL, 346; (1916) 25 *ibid.,* 258, 326; (1917) 26 *ibid.,* 159, 506, 622; (1919) 28 *ibid.,* 272, 287, 516; and see Spencer, *Some Phases of Marriage Law* (1915) 25 YALE LAW JOURNAL, 58.

MONOPOLIES—SHERMAN ACT—REFUSING TO SELL TO CUSTOMERS WHO CUT PRICES.—Colgate & Co. was indicted for an alleged violation of the Sherman Act by reason of agreeing with its customers upon reasonable prices at which its